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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,502	07/28/2003	Shing-Jung Wang	P/727-105	5068

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,502

Applicant(s)

WANG, SHING-JUNG

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/779913. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the claims do not exclude the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

Claims 1, 10-13 are objected to because of the following informalities: the term "curdlan" is not a trademark and should not be capitalized in the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 16, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yajima (6,180,148).

Yajima discloses a noodle product containing a buckwheat flour, rice flour and gluten (abstract and col. 10, lines 59-65, col. 8, lines 14-19, col. 16, lines 44-58).

Claims 1, 16 and 17 differ from the reference in the use of at least 30% of a non-wheat cereal. However, the reference disclose that various cereal flours can be used in the composition as above. Ex. 31-4 discloses 6 kg of strong flour, which is assumed to be wheat flour, and 3 kg of buckwheat flour can be used (col. 10, lines 26-34). As the reference discloses other grain flours besides wheat (non-wheat cereal) it would have been obvious to use rice or cornmeal in place of the buckwheat flour as disclosed by the reference.

Claim 18 further requires rolling, claim 19, further requires extruding. Yajima discloses that the dough can be rolled and extruded (col. 10, lines 51-59 and col. 11, lines 60-65). Therefore, it would have been obvious to make a noodle as claimed.

Claim 2 further requires that at least 50% of the total weight of the composition can be a non-wheat component. However, it would have been obvious to one of ordinary skill in the art to use more non-wheat components since it is known to add gluten to make up for this deficiency in the other non-cereal flours.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yakima as applied to the above claims, and further in view of Hunter, page 171.

Claim 3 further requires that the composition contain wheat gluten flour and wheat flour. However, wheat always contains gluten. At any rate, Hunter in Natural Foods discloses that it is known to use whole-wheat flour and gluten flour together (page 171, under "Wholewheat-Gluten Bread"). The protein in wheat flour is a crude protein, which is mostly gluten. Therefore, it would have been obvious to use gluten flour in the composition of Yakima along with wheat flour for their known functions of giving structure to the bread.

Claims 4 -7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yakima as applied to the above claims, and further in view of Schellhaass et al. (2005/0142273).

Claims 4 -7 require various amounts of crude protein in the flour. Gluten is known to be found in flour and various levels of gluten in the flour are known as disclosed by Schellhaass et al. (para (0018)). Therefore, it would have been obvious to add various amounts of gluten to flour or to use flours containing various amounts of wheat protein.

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The further limitations of claims 8, and 9 have been disclosed above and are obvious for those reasons.

Claims 10-13 further require curdlan. Yajima discloses that it is known to use curdlan as in claims 10, 12, and 13 and common salt as in claims 14 and 15 (col. 10, lines 33 and 37). The particular amounts as in claim 11 are seen as being within the skill of the ordinary worker particularly as zero amounts can be used and the function of curdlan is well known as is salt. Therefore, it would have been obvious to use particular amounts of curdlan in the claimed composition.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yajima as applied to the above claims, and further in view of Lai et al. (5,384,136).

Claim 20 further requires that the non-wheat cereal is oat. Lai et al. disclose that it is known to make a dough containing oats with added gluten and wheat flour (col. 10, lines 18-29). The reference to Yajima discloses that other grain flours such as rice and corn can be used. Therefore, it would have been obvious to use yet other grain flours such as oats as disclosed by Lai et al. in the composition of Yajima.

Claims 1-2, 16, 17, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai et al. (5,384,136).

Lai et al. disclose that it is known to make a dough product with added gluten (abstract) and to use wheat flour and other flours such as rye, corn, oats and tricale (col. 10, lines 18-29). Claims 1, 2, 16, 17, 20 differ from the reference in the use of 30% or more of other cereal grain flours. The reference teaches that when no wheat flour is

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used, gluten can be added to give the product strength, stability and height. It is known that the other flours do not contain gluten which is found only in wheat flour. Therefore, it would have been obvious to use other flours in the claimed amounts if gluten is added that the added gluten will make up for the non-gluten containing cereal flours.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 2-3-06


HELEN PRATT
PRIMARY EXAMINER